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October 18, 1988

Mr. John W. Clement, P. E., Administrator
Bureau of Railroads
Department of Transportation
John O. Morton Building
Concord, New Hampshire 03301

Re: Construction of RSA 4:40 and RSA 228:67

Dear Mr. Clement:

This is in response to your request for an opinion concerning the applicability of RSA 4:40 and RSA 228:67 to a proposed sale of railroad property in Wolfeboro, New Hampshire to the Town of Wolfeboro.

As you know, RSA 4:40 requires that the disposal of State-owned real estate be reviewed and approved by the agency having jurisdiction over the property, the Council on Resources and Development, the Long-Range Capital Planning and Utilization Committee, and the Governor and Council. The statute also provides a right of first refusal to the town, city or county in which the property is located and further requires that all sales of real property must be at current market value.

RSA 228:67 grants the Commissioner of Transportation specific authority to transfer or sell surplus rail properties, with the proceeds distributed to the Federal Railroad Administrator, if federal grant funds were used in the original purchase of the property, or to the general fund as appropriate.

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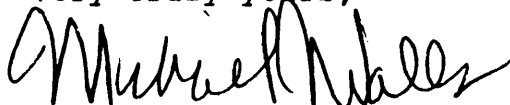


It is a general principle of statutory construction that where reasonably possible, statutes should be construed as consistent with each other. Swiezynski v. Civiello, 126 N.H. 142 (1985); State v. Woodman, 114 N.H. 497 (1974). RSA 228:67 and RSA 4:40 should therefore, be read as complementary statutory requirements concerning the sale of surplus property. RSA 228:67 specifically authorizes the Commissioner to transfer or sell surplus rail property. RSA 4:40 provides the general procedure by which all State surplus property, including rail properties, can be disposed of.

In light of the above, it is my opinion that RSA 228:67 does not authorize the Commissioner to sell or transfer surplus rail property independent of the procedures and requirements established in RSA 4:40, including the requirement that surplus property be sold for its current fair market value.

I trust that I have been responsive to your inquiry. If you have additional questions, please do not hesitate to call me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael J. Walls". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Walls".

Michael J. Walls

Assistant Attorney General

MJW/k

O-88-056